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6 **IN THE UNITED STATES DISTRICT COURT**  
 7 **FOR THE DISTRICT OF ARIZONA**

8 CARRIE FERRARA CLARK,  
 9 Plaintiff,  
 10 vs.  
 11 CITY OF TUCSON,  
 12 Defendant.

Case No. 4:14-CV-02543-TUC-CKJ

**PLAINTIFF’S RESPONSE TO  
 DEFENDANT’S MOTION *IN LIMINE*  
 NUMBER 8**

Hon. Cindy K. Jorgenson

14 Plaintiff Carrie Ferrara Clark responds and objects to Defendant’s *Motion in Limine*  
 15 8 (Doc. 150). For the reasons discussed below, Defendant’s *Motion in Limine* 8 should be  
 16 denied.

17 **VIII. Spousal Communication Privilege**

18 Plaintiff agrees to follow the terms of this Court’s Order (Doc. 75) regarding the  
 19 application of the spousal communication privilege after briefing (Docs. 66, 69, 70).  
 20 Defendant’s motion *in limine*, however, is too broad.

21 Defendant claims that “the Clarks invoked spousal privilege throughout the  
 22 discovery process, preventing the City from obtaining otherwise relevant information. . . .”  
 23 Doc. 150 p. 2. The spousal communication privilege issue came before the Court as a  
 24 discovery dispute. Defendant’s brief on this matter (Doc. 66) articulates issues related only  
 25 “throughout the discovery process” is not only an exaggeration, but Defendant offers no  
 26 other document or evidence that these matters arose outside the deposition context. Further,

1 even assuming, arguendo, Defendant's assertion is accurate, invoking the spousal  
2 communication privilege on irrelevant issues did not impair Defendant's ability to conduct  
3 discovery or prejudice it in any way. Further, because Defendant did not raise a discovery  
4 dispute over other spousal communication privilege issues outside the deposition context, it  
5 has waived its right to do so now.

6 As a practical matter, "Orders *in limine* which exclude broad categories of evidence  
7 should rarely be employed. A better practice is to deal with questions of admissibility of  
8 evidence as they arise." *Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th  
9 Cir. 1975). Further, "evidentiary rulings should be deferred until trial so that questions of  
10 foundation, relevancy and potential prejudice may be resolved in proper context." *Alfred E.*  
11 *Mann Found. for Scientific Research v. Cochlear Corp.*, 2014 U.S. Dist. LEXIS 197541, \*6  
12 (internal citation omitted.) "This is because although rulings on motions in limine may save  
13 "time, cost, effort and preparation, a court is almost always better situated during the actual  
14 trial to assess the value and utility of evidence." *Id.* (internal citation omitted.)  
15 Consequently, and because of the nature of the Court's Order, it would be premature for  
16 this Court to order a blanket prohibition on spousal communication.

## 15 **IX. Conclusion**

16 Other than the matters already instructed by this Court regarding spousal  
17 communication, and other than deposition questions where Plaintiff invoked the privilege,  
18 Defendant's motion *in limine* is overbroad, unreasonable, and should be denied. Otherwise,  
19 Plaintiff intends on following this Court's rulings and directives as outlined in its prior  
20 Orders.

21 DATED this 22nd day of January, 2019.

22  
23 **JACOBSON LAW FIRM**

24 *s/Jeffrey H. Jacobson*  
25 Jeffrey H. Jacobson  
26 *Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2019, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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